

## REMARKS

The Office Action mailed February 6, 2008 (hereinafter, "Office Action") has been reviewed and the Examiner's comments considered. Claims 23, 24, 33, 34, 37, 38, and 41-43 are pending in this application. No amendments are made herein.

### Claim Rejections - 35 U.S.C. § 103

Claims 23, 24, 34, 37, 38, and 41 stand rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,163,942 to Rydell (hereinafter, "Rydell") in view of USPN 4,198,960 to Utsugi (hereinafter, "Utsugi"), and further in view of USPN 6,527,781 to Bates et al. (hereinafter, "Bates"). Applicants respectfully traverse this rejection.

Independent claim 23 recites, *inter alia*, "a first actuator configured to extend the first operating member so as to extend the first and second legs and to simultaneously retract the second operating member so as to retract the third leg, such that the tip member is displaced rearward and the first and second legs are displaced away from each other to facilitate maneuvering the basket around an object" (emphasis added).

Independent claim 41 recites, *inter alia*, "wherein rotation of the rotatable actuator in a first direction moves the first and second gear racks so as to extend the first operating member and the first and second legs and to simultaneously retract the second operating member and the third leg" (emphasis added).

The Office Action admits that Rydell does not teach a device "configured to extend a first and a second leg and to simultaneously retract a third leg of the basket," but alleges that this feature is taught by Utsugi (Office Action, p. 3-4.). Applicants previously argued that Utsugi does not show or describe the above-referenced feature at least because the trapping wires disclosed by Utsugi are "*individually* operated" (Utsugi, col. 2, ll. 17-21, col. 4, ll. 36-43, emphasis added). Thus, the point was made that while Utsugi shows and describes *individually* extending different legs of a cage or basket, there is no showing or description in Utsugi of an actuator that *simultaneously* extends and retracts different legs of a basket, as claimed.

In response to Applicants' arguments, the Office Action states that "Utsugi is capable of retracting a third leg of the basket simultaneously using the first and second legs" and that the

“applicant does not teach structure that is necessary to simultaneously retract the first and second legs.” (Office Action, p. 7.) Applicants respectfully submit that these positions are untenable.

Pending independent claim 23 is directed to a retrieval device that includes a first actuator configured to both extend the first operating member and *simultaneously retract* the second operating member. Pending independent claim 41 is directed to a retrieval device wherein rotation of the rotatable actuator acts to both extend the first operating member and *simultaneously retract* the second operating member. Thus, even assuming *arguendo* that Utsugi does, in fact, show a retrieval device which “is capable of retracting a third leg of the basket simultaneously using the first and second legs” as alleged, Applicants note that Utsugi fails to show or describe the claimed structures of a first actuator configured to simultaneously retract a second operating member while extending a first operating member (claim 23) and a rotatable actuator wherein rotation acts to simultaneously retract a second operating member while extending a first operating member (claim 41). The claimed first actuator and rotatable actuator are respectfully submitted as clearly being structures.

With respect to the Bates, the Office Action alleges that “Bates teaches two operating members, as described above, the operator members are element 9 and element 22 as shown in Fig. 3A and Fig. 1F.” (Office Action, p. 7). However, Bates describes Fig. 1H as an alternate embodiment where “a ram-rod, laser or other lithotriptic device 9 is longitudinally disposed in a channel 200 of sheath 12” (Bates, col. 6, ll. 35-37). The lithotriptic device 9 alleged in the Office Action as the claimed operating member is not connected to the basket and does not assist in moving any of the legs of the basket. Fig. 3A, as described by Bates, simply depicts an alternate embodiment of the basket profile (“a single-unit hourglass profile 22”), as opposed to the alleged operating member. Further, Applicants were unable to find a single instance in Bates that described more than one operating member, contrary to the assertion in the Office Action. Therefore, in addition to the deficiency of Utsugi as detailed above, Bates also fails to show or describe either a first actuator or a rotatable actuator, as claimed.

In view of the above, Applicants respectfully submit that a *prima facie* case of obviousness has not been established at least because all of the claim limitations are not taught or suggested by the cited combination of references (MPEP § 2143). Accordingly, for at least these

reasons, independent claims 23 and 41 are patentable over the cited combination. Claims 24, 34, and 37-38 are patentable because they depend from a patentable independent claim, and also because they recite features not shown or described by the cited art. Therefore, Applicants request favorable reconsideration and withdrawal of the rejections under 35 U.S.C. § 103.

Claims 33 and 43 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Rydell, Utsugi, and Bates and further in view of USPAPN 2002/0019594 to McClellan, et al. (hereinafter, "McClellan"). Claim 42 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Rydell, Utsugi, and Bates and further in view of USPN 4,326,530 to Fleury, Jr. (hereinafter, "Fleury"). Applicants respectfully traverse this rejection.

In view of the above, claims 33, 42, and 43 depend from patentable independent claims 23 and 41, and are therefore patentable. Moreover, neither Fleury nor McClellan show or describe the claimed features missing from the combination of Rydell, Utsugi and Bates. Accordingly, Applicant respectfully requests favorable reconsideration and withdrawal of the rejections under 35 U.S. C. § 103.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. **50-2191** referencing docket no. 1016720032P2. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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